

**VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY**

**THE AMERICAN TRADITION  
INSTITUTE, and  
THE HONORABLE DELEGATE  
ROBERT MARSHALL**

Petitioners,

v.

**RECTOR AND VISITORS OF THE  
UNIVERSITY OF VIRGINIA,**

Respondent.

Civil Docket No. CL 11-3236  
Protective Order

**ORDER ON PROTECTION OF DOCUMENTS**

Came the parties, by counsel, on May 24, 2011, to be heard upon the petitioner's Verified Petition for Mandamus and Injunctive Relief and the Respondent's Memorandum in Opposition thereto, and were heard by the Court.

By agreement of counsel and in the interest of ensuring an efficient and prompt resolution of this action and of protecting information that may be exempt from disclosure under the Virginia Freedom of Information Act (Va. § 2.2-3700 *et seq.*) ("Act"), the Court does hereby enter this Protective Order.

Therefore, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

**A. DEFINITIONS**

1. As used herein:

a. "This action" means the above-captioned action pending in this Court, including any related discovery, pre-hearing, hearing, post-hearing, or appellate proceedings.

b. "Party" means Petitioners or Respondent in this action.

c. "Requested public records" means any public records, in any form, responsive to the Petitioners' request pursuant to the Act that is the subject of this action.

d. "Exempt Information" means any requested public records the Respondent has not disclosed under authority of the Act, including any laws or constitutional provisions that apply to those public records.

e. "Disclosed Information" means any requested public records the Respondent has disclosed pursuant to the Act.

f. "Public Record" is defined as the term is used in Va. Code § 2.2-3701.

## **B. DESIGNATION OF PROTECTED INFORMATION**

1. The Respondent may designate as Exempt Information any requested public record. Such designation shall constitute a representation to the Court that the Respondent (and counsel, if any) in good faith believes that the information so designated constitutes Exempt Information as defined herein.

2. Public records that the Respondent designates as Exempt Information, in accordance with this Order, shall be designated as such by placing on or affixing to the document containing excluded information (in such a manner as will not interfere with the document's legibility), the designation "Exempt Information", or any other appropriate notice of equivalent meaning. With respect to electronic documents, the Respondent at the time such information is produced shall specify in writing the information that is Exempt Information by identifying it (by ranges of document identification numbers or page and line numbers where applicable, or other appropriate means). For purposes of this action, any public record containing exempt or excludable information will be Exempt Information as defined herein.

**C. DISCLOSURE OF EXEMPT INFORMATION**

Except as otherwise authorized by this Order, and except for such uses as Respondent, its officers, agents, and employees may lawfully undertake without reference to this Order, information designated as Exempt Information shall be used only in connection with this action, shall not be disclosed to any person or entity other than the persons or entities set forth below, and may be disclosed only as necessary in connection with this action to the individuals set forth below:

1. The Court and all persons assisting the Court in this action, including court reporters and stenographic or clerical personnel;
2. Any other court of competent jurisdiction pursuant to lawful process or order;
3. Up to two of Petitioners' counsel, who shall be designated by name as of the entry of this Order and specifically identified in Appendix A to this Order.

**D. USE OF PROTECTED INFORMATION IN LITIGATION**

1. All Exempt Information contained or discussed in any pleading, motion, exhibit, or other paper filed with the Court shall be filed under seal. The parties shall attempt, consistent with effective advocacy in this action and their duties to their clients, to use as little Exempt Information as possible in any pleading, motion, exhibit, or other paper filed with this Court. Information filed under seal shall be placed in a sealed envelope/box with the endorsements required by the applicable rules of the Court. The Clerk shall keep such papers under seal until further order of this Court; provided however, that such papers shall be furnished to the Court and to persons and entities who may receive protected information pursuant to the Protective Order.

2. Within 30 days after the date on which Respondent supplies Disclosed Information, the Respondent shall provide the Petitioners' counsel designated pursuant to Paragraph (C) (3), above, copies of all Exempt Information in a form to be agreed upon between the parties.

3. The Petitioners shall have 90 days after receipt of the Exempt Information to review it, negotiate with the Respondents, and, if they choose, file a petition with the Court for *in camera* review for determination as to whether the Respondent properly designated the records as Exempt Information as defined herein.

**E. OTHER PROCEDURES**

1. This Order shall be without prejudice to the right of any party to bring before the Court the question of whether any particular information designated Exempt Information is appropriately designated. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the right of the Respondent to assert any applicable authorization to exclude the public records from disclosure. No Exempt Information pursuant to this Order shall be disclosed except as provided herein unless and until the Court orders the release of such information from the provisions of this Order.

2. Any production of information without its being designated as Exempt Information shall constitute a waiver of any exclusion claim as to such information.

3. This Order shall not apply to information in the public domain or obtained from other sources regardless of whether such information is also contained in materials designated as Exempt Information pursuant to this Order.

**F. PROCEDURES UPON TERMINATION OF LITIGATION**

1. Within 90 days after receiving notice of the entry of an order, judgment or decree

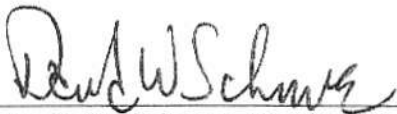
terminating this action and after the conclusion of any appeals, all persons having received Exempt Information shall, at the election of the Respondent, either return such Exempt Information and all copies thereof to counsel for the Respondent, or destroy all such material and certify that fact in writing. All ~~protected information~~ <sup>exempt information</sup> returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this Paragraph.

*DAS/Rel*

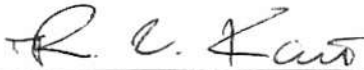
**G. RIGHT TO SEEK MODIFICATION**

1. The parties reserve the right to apply to the Court for any order modifying this Order or seeking further protections against use of protected information.
2. All hearings in this action, including those associated with challenges to exclusion designations, will presumptively be open to the public, except that this Court will issue further orders as necessary to protect any protected information from improper disclosure.

**SO STIPULATED.**

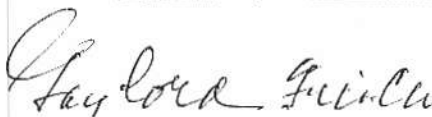


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Virginia State Bar Identification No. \_\_\_\_\_  
Counsel for Respondent

ENTERED this 24 day of May, 2011



Gaylord L. Finch  
Judge

**APPENDIX A**

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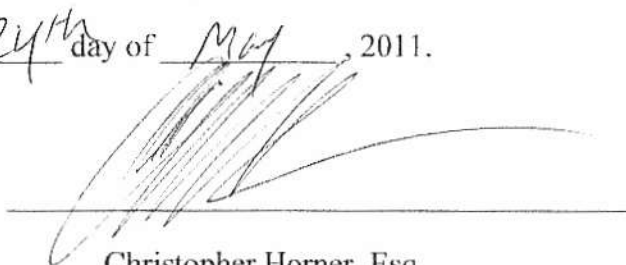
Civil Docket No. CL 11-3236  
**AGREEMENT CONCERNING  
CONFIDENTIALITY**

I, Christopher C. Horner, serve as Senior Director of Litigation at the Environmental Law Center of the American Tradition Institute. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the Circuit Court Of Prince William County solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this 24<sup>th</sup> day of May, 2011.

A handwritten signature in dark ink, appearing to read "Christopher Horner", is written over a horizontal line.

Christopher Horner, Esq.

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I, David W. Schnare, serve as Director of the Environmental Law Center of the American Tradition Institute. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.
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A handwritten signature in cursive script, appearing to read "David W. Schnare", written over a horizontal line.

David W. Schnare, Esq., Ph.D.